

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Augustin H. Sanchez,
Petitioner

v.

Case No. 10-cv-210-SM
Opinion No. 2010 DNH 107

United States of America,
Respondent

O R D E R

Petitioner's motion for relief under the provisions of 28 U.S.C. § 2255 must be dismissed as untimely.

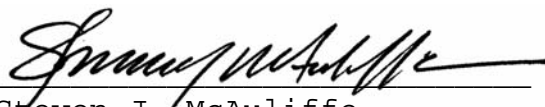
Judgment was entered in the underlying criminal case on February 11, 2009, and became final on February 23, 2009. Petitioner had one year from that date to seek relief under Section 2255. He did not sign the petition, however, until May 26, 2010, (presumably he also gave the petition to prison officials on that date for mailing). Since the petition was not filed within one year of petitioner's conviction becoming final, it must be dismissed. See 28 U.S.C. § 2255(1).

In any event, even if the petition had been timely filed, it would be dismissed for lack of merit. Petitioner claims that his plea of guilty to, and subsequent conviction of, possessing a firearm in furtherance of a drug trafficking crime was due to a "misapplication" of 18 U.S.C. § 924(c)(1)(A). That is not so.

Petitioner admitted, under oath, during his plea colloquy that he knowingly and intentionally possessed the handgun and rifle at issue in furtherance of a conspiracy to distribute in excess of 100 kilograms of marijuana. Search warrants executed at petitioner's home and at a stash house, resulted in recovery of the firearms from the stash house, and documents from petitioner's home establishing his connection to, and constructive possession of those firearms. The prosecutor proffered those facts as supporting the charge, and petitioner agreed they were true and correct – including that the proximity of the firearms to the drugs and location at the stash house established their use in furtherance of the conspiracy. Finally, petitioner stipulated to forfeiture of those firearms as contraband used in the conspiracy. The provisions of 18 U.S.C. 924(c)(1)(A) were not misapplied in petitioner's case.

The petition is dismissed.

SO ORDERED.


Steven J. McAuliffe
Chief Judge

June 29, 2010

cc: Augustin H. Sanchez, pro se
Aixa Maldonado-Quinones, AUSA